IN THE SUPREME COURT

APPEAL FROM THE MICHIGAN COURT OF APPEALS
AND THE WAYNE COUNTY CIRCUIT COURT

CITY OF DETROIT, a Municipal corporation,

Plaintiff/Appellant,

Supreme Court Docket No. 114794
Court of Appeals Docket No. 211552
Case No. 96-638479 CE

and

FRANK J. KELLEY *ex rel.* MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY (MDEQ), and MICHIGAN DEPARTMENT OF NATURAL RESOURCES (MDNR),

Intervening Plaintiffs/Appellants,

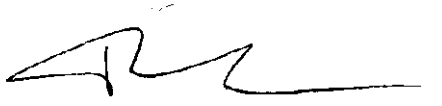
v.

PETER ADAMO, ANDIAMO, INC., a Michigan corporation, and 5900 ASSOCIATES, L.L.C., a Michigan Limited Liability Company,

Defendants/Appellees.

BRIEF ON APPEAL OF PLAINTIFF/APPELLANT CITY OF DETROIT

ORAL ARGUMENT REQUESTED



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STATEMENT OF BASIS OF JURISDICTION

Plaintiff City of Detroit ("City") appeals the published Court of Appeals opinion released on February 23, 1999, ("*Adamo I*"), which affirmed the Wayne County Circuit Court's ("Circuit Court") March 5, 1998 Opinion and Order, as modified and converted into a final judgment on April 16, 1998. The Circuit Court's final judgment granted summary disposition in favor of Defendants-Appellees. The City also appeals the Court of Appeal's related decision in *State of Michigan v Peter Adamo, et al.* (Supreme Court Docket No. 119142), dated February 9, 2001 ("*Adamo II*"), which also affirmed the Circuit Court's final judgments. This Court has jurisdiction over this matter pursuant to MCR 7.301(A)(2) because the City is seeking review of a decision by the Court of Appeals.

The relief sought by the City in this appeal is two-fold. First, the City will ask this Court to reverse the Court of Appeals' decisions in *Adamo I* and *Adamo II*, as well as the Circuit Court's final judgment. Second, because the sole issue in this case involves an interpretation of the General Property Tax Act and Michigan case law and no facts are in dispute, the City would ask this Court to enter judgment in its favor as a matter of law.

STATEMENT OF QUESTION PRESENTED FOR REVIEW

I. Whether the Court of Appeals erred in *Adamo II* when it refused to apply and enforce the Legislature's amendments to section 131e of the General Property Tax Act ("GPTA") to this litigation?

Plaintiff-Appellant answers, "Yes."

Defendant-Appellee answers, "No."

The Court of Appeals answers, "No."

II. Whether the Court of Appeals and Circuit Court erred in holding that persons who had abandoned their property, refused to pay taxes, have received and ignored redemption notices for years and failed to timely redeem delinquent taxes on properties bid in to the State can extend the final statutory redemption period under GPTA §131e as to their interests because the State failed to simultaneously notify other unrelated interested parties?

Plaintiff-Appellant answers, "Yes."

Defendant-Appellees answer, "No."

The County Circuit Court answered, "No."

The Court of Appeals answered, "No."

III. May the Court of Appeals and the Circuit Court overturn the Michigan Department of Treasury's longstanding interpretation of the GPTA §131e, invalidate a notice procedure employed by that department for over twenty years and consequently throw into question the validity of title to thousands of tax foreclosed properties in the State of Michigan by applying for the first time a now invalid and completely inapplicable 1907 decision by this Court to GPTA §131e?

Plaintiff-Appellant answers, "No."

Defendant-Appellees answer, "Yes."

The County Circuit Court answered, "Yes."

The Court of Appeals answered, "Yes."

INTRODUCTION

By agreeing to take this appeal, this Court can now correct a grievous error made by the Court of Appeals and the Wayne County Circuit Court regarding the method and manner in which the State of Michigan forecloses on tax delinquent properties under the General Property Tax Act (GPTA).[1] Specifically, the lower courts for the first time have adopted an interpretation of GPTA §131e that allows delinquent taxpayers who receive and ignore multiple notices of their delinquent property taxes to maintain redemption rights on grounds that unrelated third parties did not receive redemption notices.

It is an error that the Michigan Legislature expressly corrected when it amended GPTA §131e, but that was further compounded when the Court of Appeals refused to enforce the Legislature's amendment on grounds that applying the law to this case would somehow violate the doctrine of separation of powers. In its effort, however, to avoid a constitutional problem, the Court of Appeals has done just the opposite—it has created one. By refusing to enforce the law and the unambiguous will of the Legislature, the Court of Appeals has itself encroached upon and usurped the power of that branch of our government to enact curative and remedial legislation. And in addition to creating its own separation of powers violation, the Court of Appeals' initial misinterpretation of GPTA §131e erroneously overturned the State Department of Treasury's longstanding interpretation of that statute, invalidating a notice procedure employed by that department for over twenty years and consequently throwing into question the validity of title to thousands of tax delinquent properties that the State has acquired using the procedure that the Court of Appeals has now decided to reject.

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[1] MCL 211.1, *et seq*; MSA 7.1 *et seq*.

There is no issue that the State fully complied with the foreclosure procedures with respect to those owners. There is also no issue that the noticed property owners received all their tax delinquency notices, knew that their taxes where delinquent for years and chose not to redeem these taxes despite numerous opportunities to do so. Nonetheless, the Court of Appeals and the Circuit Court suddenly abrogated the State's established staggered notice and redemption provisions when they applied—for the first time—a now invalid 1907 decision issued by this Court to the State. The 1907 decision was construing tax title purchaser rules that are not applicable to the State. Both lower courts admit this. Moreover, GPTA §131e did not even exist in 1907. Nonetheless, the Court of Appeals affirmed the Circuit Court's holding, applying private tax title purchaser rules to the State and overruling the State's interpretation of its notice requirements under section 131e.

This appeal is, unfortunately, one of riveting public interest. Unless overturned by this Court, material injustice will be visited on the citizens and municipalities of this State because of the errors by the lower courts. Unbeknownst to them, thousands of citizens, government agencies, cities and other municipalities state-wide have had title to their property potentially stripped from them by the Court of Appeals' holding, exhuming the redemption rights of delinquent taxpayers, who long ago forfeited their interest. What if these delinquent taxpayers attempt to assert these resurrected "redemption rights" over the parks, and hospitals, and homes now erected on these properties? This is the title nightmare that the lower courts have created.

Their decision violates the GPTA's definitive redemption periods, causes chaos in the tax foreclosure process, frustrates title perfection and alienation and exacerbates title gridlock. Neither the Court of Appeals nor the Circuit Court can articulate any public policy that justifies such results. This Court can now correct these mistakes and make a decision that will promote healthy urban and

rural redevelopment and to promptly avert the title nightmare and administrative mayhem the Circuit Court and Court of Appeals have set in motion by their erroneous decisions.

STATEMENT OF MATERIAL PROCEEDINGS AND FACTS

General Background

In this case, two companies, defendants-appellees 5900 Associates, L.L.C., and Andiamo, Inc., purchased quitclaim interests in two abandoned and environmentally contaminated properties in the City of Detroit in 1996. The two properties, the Old World Trade Center Property at 5900 Livernois ("Livernois property") and the former Chrysler site at 6501 Harper ("Harper property") had been illegally subjected to dumping for years. In 1994 and 1995, before defendants-appellees purchased their quitclaim interests, the State obtained indefeasible title to these properties through the tax reversion process.

The Michigan Department of Natural Resources, now the Department of Environmental Quality, in conjunction with the United States Environmental Protection Agency, began a million dollar cleanup removing not only mounds of trash, abandoned semitrailers, cars, tires, construction debris, but also environmentally contaminated soil and drums from the properties. Because of the public health threat posed by these properties, the City sought injunctive relief to prevent any further demolition, dumping, scavenging, or contamination of these State-owned properties by defendants-appellees or the former owners. In the context of the litigation for injunctive relief, defendants-appellees challenged the State's title and asserted the viability of the redemption rights of defendants' predecessors in interest under section 131e of the GPTA.

Ownership History Of The Livernois Property

The Livernois Property was at one time owned by Kelsey Hayes. Kelsey Hayes conveyed the property to Livernois-McGraw Associates, which in turn quit claimed it to Ultimate Corporation on June 13, 1986.[2] Ultimate Corporation was the last record owner of the Livernois property before the State acquired title under former sections 67 and 67a of the GPTA.[3] On May 4, 1993, the State Treasurer quit claimed all interest in the property to the State.[4] These facts are not in dispute.

Ownership History of the Harper Property

The Harper property is the site of a former Chrysler plant. Chrysler owned this property until April 29, 1985, when it sold the property to Philip Stramaglia, Carlo Galuppi, and Michelle Najor.[5] On May 5, 1992, the State acquired title to the Harper property under former sections 67 and 67a of the GPTA.[6]

Foreclosure Process For Properties Bid In To The State

In July 1999, and in response to calls for reforms to the foreclosure process, Governor Engler signed into law House Bill No. 4489, which made sweeping changes to the GPTA and the manner in which the State and its counties and municipalities addressed tax delinquent properties. As a result, the tax foreclosure process now in place is far different from the process in effect throughout the history of the subject properties and the pendency of this litigation.

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[2] Livernois McGraw Associates Quitclaim Deed (App 2a).

[3] MCL 211.67, 67a; MSA 7.112(1).

[4] Affidavit of Thomas F. Willard Regarding World Trade Center (Livernois) Property, ¶¶ 6-7 (App 8a) and enclosed State Treasurer's Deed (App 14a).

[5] Warranty Deed (App 1a).

[6] Affidavit of Thomas F. Willard Regarding Harper/Mt. Elliott Property, ¶ ¶ 6-7 (App 35a).

The former GPTA provided for two distinct methods for the sale of tax-foreclosed properties. Under one method, private citizens could purchase such properties by purchasing tax liens.[7] The other method applied to tax-foreclosed properties bid in to the State. Because the State, and not a private tax sale purchaser, acquired title to the Livernois and Harper properties, the rules of the latter method applied to this case.

The former GPTA authorized the State to foreclose on and sell tax delinquent properties. Those persons who, according to the tax assessment records, had an interest in such properties were first notified of the State's impending foreclosure hearing at least thirty days prior to the hearing.[8] At the hearing, such persons could appear to oppose entry of the foreclosure decree authorizing the State to sell the tax delinquent property.[9] If no one appeared, the property would be included on a list compiled by the county treasurer of delinquent properties subject to an annual tax sale that took place in May.[10] In the event a property was not purchased at the annual tax sale, its title would then be bid in to the State.[11]

Even after a tax sale, however, the GPTA provided a person with an interest in tax delinquent property three more opportunities to redeem delinquent taxes. The first redemption opportunity expired one year after the tax sale.[12] If taxes went unredeemed at the

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[7] MCL 211.72; MSA 7.117.

[8] MCL 211.61a(1); MSA 7.106.

[9] MCL 211.61a(3); MSA 7.106.

[10] MCL 211.61b(1): MSA 7.106(1).

[11] MCL 211.67; MSA 7.112.

[12] MCL 211.74(1); MSA 7.120.

conclusion of this one-year period, title to the property would vest in the State.[13] The second redemption opportunity expired six months later.[14]

Sometime after the expiration of the second redemption period, the State, under GPTA §131e, would send an owner of a significant interest in tax delinquent property a hearing notice, giving the owner one more opportunity to show cause why the State's tax deed should be canceled.[15] The third and final redemption period would expire thirty days after this hearing.[16] If during this period the owner failed to either redeem delinquent taxes or provide sufficient evidence to prove that the State's tax deed was invalid, title to the property would indefeasibly vest in the State.[17]

Before sending redemption notices, the State would conduct title searches to identify owners with significant property interests.[18] It had always been the State's practice to mail notices simultaneously to those persons who, based on the title search, were discovered to have significant property interests. As the foreclosure process proceeded, after having sent notices to all of the entities identified by the title search, the State would often receive calls from owners claiming they had not received notice. As a courtesy, the State would sometimes resend notices to those who requested them. It was not at all unusual for persons to be missed in the initial mailings for a variety

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[13] MCL 211.67; MSA.112. "Unless sooner redeemed, upon expiration of such period of redemption provided for in section 74 of this act, absolute title to the lands so sold and bid into the state shall vest in the state of Michigan as provided in said decree".

[14] MCL 211.131c(1); MSA 7.190(1)(1).

[15] MCL 211.131e(1),(2); MSA 7.190(3)(1); MSA 7.190(3)(2). Section 131e was recently amended by PA 1996, No. 476, §1, to provide, *inter alia*, that notice was to be given to owners with a recorded property interest rather than owners with a significant property interest.

[16] MCL 211.131e(3), MSA 7.190(3)(3).

[17] *Id.*

[18] Affidavit of Thomas F. Willard, ¶ 4 (App 102a)

of reasons, including the fact that owners sometimes failed to record their interests or update their mailing addresses at the office of the register of deeds. Many notices were returned unclaimed or undeliverable. In those cases, the State would attempt to locate another address for the owner.

Perfectly simultaneous mailing of notices is and was, as a practical matter, impossible. Such a process would necessarily entail multiple mass mailings of the same notices to many of the same people each time a new owner of a significant property interest steps forward and records. To require the State to resend notices to all the owners to whom notices were previously mailed and to do multiple searches on properties, simply for the sake of simultaneity, would interminably extend the redemption period.[19]

Foreclosure Proceedings For The Livernois Property

Two years after purchasing the Livernois property, Ultimate stopped paying county and city taxes. Ultimate's tax liability grew astronomically as it continued to ignore the taxes. From 1988 to 1995, Ultimate paid no county taxes. From 1989 to 1996, this company also paid no city taxes. In all, Ultimate accumulated a tax delinquency of over $320,000.

As set forth below, throughout the decade that the taxes remained unpaid on the Livernois property, Ultimate had numerous opportunities to prevent a foreclosure. It instead chose to abandon the property altogether:

(1) Ultimate never responded to the section 61a hearing notice, giving it the opportunity to oppose the foreclosure decree's entry.[20]

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[19] Under its current system, the State already spends an average of $72,480 annually to conduct title searches and $27,564 to $56,644 annually for mailing. Affidavit of Thomas Willard, ¶¶ 4, 5 (App 102a).

[20] MCL 211.61a; MSA 7.106.

(2) Consequently, the Livernois property was sold to the State in May 1992 under section 67a.[21]

(3) Later, Ultimate ignored its first post-sale redemption opportunity when it failed to redeem delinquent taxes within a year of the tax sale, and the State became vested with absolute title to the property.[22]

(4) On March 21, 1994, the State Treasurer conveyed a deed quitclaiming its interest in the Livernois property to the State.[23]

(5) Ultimate also disregarded its second redemption opportunity which expired six months later in November 1993.[24]

(6) On September 25, 1995, the State Treasurer sent Ultimate a final hearing notice, by certified mail, giving Ultimate a final opportunity to show cause why the State's tax deed should be set aside.[25] Ultimate signed for and received this notice.

(7) On October 30, 1995, the hearing date, Ultimate failed to appear.[26]

(8) Ultimate waived its third and final redemption opportunity when it failed to redeem delinquent taxes thirty days after the October 30, 1995 hearing.[27]

(9) When Ultimate disregarded this final notice, the GPTA effectively extinguished its ownership interests in the property, including all redemption rights.[28]

At this point, the State's title in the Livernois property became indefeasibly vested. None of these facts are in dispute.

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[21] MCL 211.67a; MSA 7.112(1).

[22] MCL 211.74; MSA 7.120.

[23] MCL 211.67a; MSA 7.112(1). Affidavit of Thomas Willard dated October 18, 1996 (App 49a).

[24] MCL 211.131c; MSA 7.190(1).

[25] Proof of Notice/Hearing Affidavit (App 4a).

[26] *Id.*

[27] *Id.*

[28] MCL 211.131e; MSA 7.190(3).

Foreclosure Proceedings For The Harper Property

Within one year after acquiring an interest in the Harper property, Mr. Stramaglia also stopped paying city taxes, and, within three years, he stopped paying county taxes. He continued to ignore the mounting tax delinquency for another nine years. The tax liability on the Harper property is over $170,000.

Like Ultimate, Mr. Stramaglia ignored numerous opportunities to prevent the property's foreclosure:

(1) At least thirty days prior to the sale, Mr. Stramaglia received the hearing notice that the State would seek a foreclosure decree authorizing it to sell the Harper property for delinquent taxes.[29]

(2) When Mr. Stramaglia failed to pay the taxes or otherwise act, the Harper property was bid off to the State in a May 1991 tax sale under GPTA section 67.[30]

(3) Mr. Stramaglia ignored his first redemption opportunity, failing to redeem the property by May 1992, and absolute title to the property vested in the State.[31]

(4) On May 5, 1992, the State Treasurer quitclaimed the Harper property to the State.[32]

(5) Mr. Stramaglia also bypassed his second redemption opportunity which expired in November 1992.[33]

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[29] MCL 211.61a; MSA 7.106.

[30] Affidavit of Thomas Willard, Re Mt. Elliott/Harper Property, ¶5 (App 34a).

[31] *Id*, ¶6 (App 35a).

[32] *Id.*

[33] MCL 211.131c; MSA 7.190(1).

(6) The State Treasurer scheduled a show cause hearing on April 12, 1994, at which Mr. Stramaglia could show cause why the State's tax deed should be set aside.[34]

(7) The State Treasurer sent Mr. Stramaglia a hearing notice by certified mail on April 5, 1994.[35] Mr. Stramaglia received this notice.

(8) Mr. Stramaglia failed to appear at the final show cause hearing.[36]

(9) Mr. Stramaglia missed his third and final redemption opportunity when he failed to pay the taxes before May 12, 1994, thirty days after the final hearing.[37]

Mr. Stramaglia received his section 131e notice of his final redemption opportunity. When Mr. Stramaglia failed to redeem his property before the expiration of the section 131e redemption period, title to the Harper property became indefeasibly vested in the State.[38] These facts are also not disputed.

5900 Associates' Interest In The Livernois Property

In 1996, the Michigan Department of Environmental Quality (MDEQ) was conducting environmental site assessments at the Livernois property. The property was, and still is, severely contaminated with hazardous substances from illegal dumping and past operations. During that time, defendant/appellee Peter Adamo represented to MDEQ personnel that he owned this property. Although the MDEQ requested proof that Mr. Adamo in fact owned the property, he produced none.

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[34] Proof of Notice/Hearing Affidavit (App 5a).

[35] *Id.*

[36] Affidavit of Thomas Willard regarding Harper/Mt. Elliott Property, dated October 18, 1996, ¶9 (App 35A).

[37] MCL 211.131e; MSA 7.190(3).

[38] Affidavit of Thomas Willard Regarding Harper/Mt. Elliott Property, dated October 18, 1996, ¶11 (App 35a).

At this time, the City also learned that Mr. Adamo was visiting the sites with an individual by the name of Tom Carter. Mr. Carter had been involved in the illegal demolition of various abandoned properties throughout the City and, in 1997, was convicted of malicious destruction of property and other criminal violations stemming from these activities. Moreover, the State had filed a civil action against Mr. Adamo for illegal dumping on the properties.

When Mr. Adamo failed to verify his ownership representations, the City commenced this case in August 1996 to enjoin Mr. Adamo and the other defendants from activities that could exacerbate the environmentally hazardous conditions on the property. On the eve of the initial preliminary injunction hearing, however, defendants produced two documents that allegedly supported their ownership claims: a preliminary title insurance commitment for Mr. Adamo's company, Andiamo, Inc., and a bill of sale transferring Ultimate's rights in the property to Ultimate Associates Corporation, another company owned by Mr. Adamo.

Andiamo's title commitment was dated January 30, 1996. Attached to the title commitment was a proof of notice that indicated that Ultimate had received its section 131e notice. Also attached was a State deed establishing that the Livernois property was in fact State-owned and that the redemption period expired on November 29, 1995, two months before the title commitment had been prepared. The bill of sale allegedly memorialized Ultimate Association's purchase of Ultimate's property, including, allegedly, the Livernois property. But the bill of sale was dated September 25, 1996, almost one year after Ultimate's redemption rights in the property had expired.

It was clear from these documents that, contrary to his assertions, neither Adamo nor Andiamo had a valid ownership interest in the Livernois property. It is also clear that 5900

Associates acquired its quitclaim interest in September 1996 with full knowledge that Ultimate's final redemption opportunity had lapsed.

Andiamo's Alleged Interest In The Harper Property

Like the Livernois property, the Harper property had been subjected to substantial amounts of illegal dumping of hazardous substances and construction debris, and, in 1996, the U.S. Environmental Protection Agency (USEPA), in conjunction with the MDEQ, commenced emergency hazardous substance removal activities on the site. In August 1996, one of Adamo's agents represented to USEPA representatives that Mr. Adamo owned the Harper property. When asked to prove his ownership interest, Mr. Adamo again failed to respond.

As with the Livernois property, defendants produced two documents the day before the hearing on the City's preliminary injunction motion. The first document produced was a title insurance commitment for the Harper property, dated May 22, 1996. The proposed title commitment was expressly "subject to the interest of the State of Michigan by virtue of non-redemption from the 1991 tax sale recorded in 2/18/93." Furthermore, Andiamo, the named insured, was required to record "a deed from the State of Michigan into the chain of title" before its interest could be insured. The signed certified receipt for Mr. Stramaglia's section 131e notice was also attached, alerting defendants that Mr. Stramaglia had received his final notice but failed to redeem. The second document was a quitclaim deed in which Mr. Stramaglia purportedly quitclaimed to Andiamo his interest in the Harper property.[39] The deed is dated May 22, 1995, two years after title to the Harper property vested in the State and almost one year after Mr. Stramaglia's redemption rights in the property expired.

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[39] Quitclaim Deed, dated May 22, 1995, from P. Stramaglia to Andiamo, Inc. (App 3a).

Given the expiration of all redemption periods well prior to the time Andiamo acquired an interest in the Harper property, Andiamo's (and Adamo's) interest in the property was, in effect, non-existent. As with 5900 Associates, Andiamo acquired its quitclaim interest knowing that the Stramaglia's redemption period had expired.

Notification Of Redemption Rights To All Other Owners Of Interests In Livernois Property

In addition to Ultimate, the State notified other owners of interests in the Livernois property of the opportunity to redeem delinquent taxes.[40] The State sent these notices in September 1995 at the same time Ultimate received notice of the final redemption period. Due to a variety of circumstances, however, not all owners of interest in the property were notified at this time. Consequently, on July 29, 1997, the State sent additional section 131e redemption notices to all of the owners of recorded interests who did not receive notices in September 1995. These owners included: Fruehauf Finance Company, Chase Manhattan Bank, and General Electric Capital Corp.[41] No one appeared to contest or redeem delinquent taxes at either the October 1995 or August 1997 section 131e hearings.

Notification Of Redemption Rights To All Other Owners Of Interest In The Harper Property

In addition to sending a section 131e notice to Mr. Stramaglia, in April 1994, the State sent notices to other persons and entities with interests in the Harper property.[42] Like the Livernois property, not all owners of interests in the property were sent notices at this time. Consequently, in

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[40] Affidavit of Thomas Willard Regarding World Trade Center Property, ¶11 (App 42a).

[41] *Id.*

[42] Affidavit of Thomas Willard Regarding Harper/Mt. Elliott Property, dated October 9, 1997 (App 81a).

July 1997, the State sent additional section 131e notices to the following persons and entities with interests in the Harper property: Michelle Najor, Carlo Galuppi, Caputo & Company and the United States.[43] No one ever contested the delinquent taxes or redeemed these taxes.

The Circuit Court Litigation

As discussed above, the City started this case in August 1996 to, among other things, prevent defendants-appellees from trespassing or entering onto properties they clearly did not own. The City immediately moved for injunctive relief, which the Circuit Court granted and which remained in effect for almost two years. The basic facts of the case were not, and are not now, in dispute. 5900 Associates and Andiamo acquired their respective interests in the properties well after their predecessors' in interest redemption rights under section 131e had expired. Their predecessors-in-interest each received the requisite notices under the GPTA. Indeed, the only issue ever in dispute has been a purely legal one—whether parties who receive and ignore notification that their redemption rights will expire can revive those redemption rights on the basis that other unrelated third parties did not simultaneously receive notice.

The State moved for summary disposition on the redemption issue in December 1996. On March 5, 1998, the Circuit Court issued an opinion and order—later modified by another opinion[44] and order—that held that these defendants (with the exception of Mr. Adamo)[45] still have redemption rights in the Harper and Livernois properties because the State failed to simultaneously notify all

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[43] *Id.*

[44] Opinion, dated March 5, 1998 (App 104a).

[45] The Circuit Court correctly held that Mr. Adamo has no interest in either the Livernois or Harper properties.

owners with significant interests in the properties that their redemption rights would expire.[46] The Circuit Court converted these opinions and orders into a final judgment on April 16, 1998.[47] The City and State filed a timely claim of appeal on May 7, 1998.

The Court of Appeals' *Adamo I* Decision

Because the City's and the State's appeal of the Circuit Court's final judgment were not consolidated,[48] the appeals proceeded along separate schedules even though they involved the same facts and legal issues. The Court of Appeals heard oral argument in the City's appeal on December 1, 1998 and, on February 23,1999, it entered its decision in *Adamo I,* affirming the Circuit Court's final judgment. In June 1999, the City filed a timely application for leave to appeal that decision to this Court.

Because the State had not simultaneously mailed notice to all owners, the Court of Appeals in *Adamo I* held that defendants-appellees acquired viable redemption rights, even though the entities through which they claimed an interest had received several notices had failed to timely redeem. Following a 92-year old case by this Court—*White v Shaw*[49]—the Court of Appeals determined in *Adamo I* that the State, like a private tax title purchaser, was required to notice and/or accomplish redemption simultaneously. The City filed a motion for reconsideration, explaining that the tax title purchaser foreclosure rules were inapplicable to the State. The Court of Appeals denied this motion

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[46] *Id* at p 15. (App 118a).

[47] Final Judgment, dated April 16, 1998 (App 121a).

[48] The Court of Appeals entered an order un-consolidating the appeals on October 15, 1998.

[49] 150 Mich 270; 114 NW 210 (1907).

on May 10, 1999. On July 22, 1999, the City filed a timely application for leave to appeal to this Court.

The 1999 Amendments to GPTA §131e

While the City's application for leave was pending before this Court, Governor Engler signed into law House Bill No. 4489, a bill which made sweeping changes to the GPTA, and which had been the subject of months of deliberations and negotiations between the House, the Senate and the Governor's office. Included in this bill were changes to GPTA §131c, which were made in direct response to the Court of Appeals' decision in *Adamo I*. Those amendments clarified and corrected the *Adamo I* and Circuit Court decisions:

> (5) For all property the title to which vested in this state under this section after October 25, 1996, the owner of a recorded property interest who has been properly served with a notice of the hearing under this section and who fails to redeem the property as provided under this section shall not assert any of the following:
>
> (a) That notice was insufficient or inadequate on the grounds that some other owner of a property interest was not also served.
>
> (b) That the redemption period provided under this section was extended in any way on the grounds that some other owner of interest was not also served.[50]

In addition, the Michigan Legislature expressly made the amendments to GPTA §131c retroactive:

> Section 131e of the general property tax act, 1893 PA 206, MCL 211.131e, as amended by this amendatory act, is retroactive and is effective for all property the title to which vested in this state under section 131e of the general property tax act, 1893 PA 206, MCL 211.131e, after October 25, 1976.[51]

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[50] MCL 211.131e(5), eff. July 23, 1999.

[51] MCL 211.131e, eff. July 23, 1999.

Consequently, as explained below, the Legislature's changes to GPTA §131e nullified the grounds upon which the Court of Appeals (in *Adamo I*) and the Circuit Court reached their decisions.

The Court of Appeals' *Adamo II* Decision

On February 9, 2001, the Court of Appeals rendered its decision in the State's pending appeal. Although the Court of Appeals in *Adamo II* recognized the 1999 amendments to GPTA §131e, it refused to apply those amendments on grounds that to do so would somehow violate the doctrine of separation of powers. The State filed a timely application for leave to appeal, which this Court granted (along with the City's application) on December 12, 2001.

LEGAL ARGUMENT

I. INTRODUCTION TO LEGAL ARGUMENT

This Court should reverse the Court of Appeals' decisions in *Adamo I* and *Adamo II* for two separate reasons:

A. The Court of Appeals' refusal in *Adamo II* to apply the 1999 amendments to GPTA §131e was clear legal error. These amendments were enacted in direct response to the Court of Appeals' erroneous interpretation of GPTA §131e and were, by express instruction, intended to be given retroactive effect. Application of GPTA §131e to this case presents neither a separation of powers nor a due process violation.

B. The Court of Appeals' decision in *Adamo I* was also erroneous. By misinterpreting this Court's holding in *White v Shaw*, the Court of Appeals in *Adamo I* imposed for the first time in almost a century a notice requirement that (1) is not supported by the plain language of GPTA §131e, (2) is unworkable and (3) contravenes the State's own long-standing interpretation and administration of that statute.

Simply put, the Court of Appeals' decisions in *Adamo I* and *Adamo II* are constitutionally infirm and are bad public policy. The decisions must be reversed.

II. THE *ADAMO II* COURT'S FAILURE TO APPLY THE 1999 AMENDMENTS TO GPTA §131e WAS CLEAR LEGAL ERROR.

A. The 1999 Amendments to GPTA §131e Require Reversal of the Adamo Appeals Court and Circuit Court Decisions.

When Governor Engler signed into law the Legislature's 1999 amendments to GPTA §131e, he implemented the Legislature's unequivocal and undisputed intention to correct the grievous error made by the Court of Appeals and the Circuit Court in their interpretations of that statute. The amendments prevent persons—like defendants-appellees here—who receive and ignore §131e redemption notices from extending the statutory redemption period on grounds that (1) "notice was insufficient or inadequate on the grounds that some other owner of a property interest was not also served;" or (2) "the redemption period provided under . . . section [131e] was extended in any way on the grounds that some other owner of interest was not also served.[52] And these amendments were only necessitated when the Court of Appeals in *Adamo I* and the Circuit Court applied for the first time an interpretation of former GPTA §131e that incredibly allowed delinquent tax payers to retain redemption rights indefinitely, even though they had received and ignored multiple notices that their redemptions rights would expire.

The fact that the application of the 1999 amendments to GPTA §131e would control the outcome of this case is beyond dispute. In *Adamo II*, the Court of Appeals admitted as much when it stated: "If this had been the way the statute read when this issue was first raised in the trial court, we would hold that Andiamo, Inc., had no right to redeem the Chrysler site because Stramaglia's right of redemption was extinguished when he failed to redeem the property within 30 days

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[52] MCL 211.131e(5); MSA 7.190(3)(5), emf. July 23, 1999.

following the April 12, 1994, show cause hearing."[53] Indeed, throughout the course of this litigation, defendants' only defense was a legal one— specifically, that the State had an obligation to notify all record owners at the same time.

Moreover, the Michigan Legislature expressly made the amendments to GPTA §131e retroactive and "effective for all property the title to which vested in this state under section 131e of the general property tax act, 1893 PA 206, MCL 211.131e, after October 25, 1976."[54] This retroactive amendment applies directly to the properties at issue in this case.

B. The Court of Appeals' Refusal in *Adamo II* to Apply the 1999 Amendments to GPTA §131e Is on Grounds That it Violates the Doctrine of Separation of Powers Is a Clear Error of Law.

Even though the Court of Appeals in *Adamo II* recognized that the 1999 amendments to GPTA §131e would require a reversal of its decision in *Adamo I* and the Circuit Court's prior judgment, the Court of Appeals still refused to apply those amendments to this case on grounds that it would somehow violate the doctrine of separation of powers:

> If the 1999 amendments to §131e were to apply in the case at hand, it would require that the courts reopen or set aside the prior judgment. . . . Such a result is precluded by the doctrine of separation of powers.[55]

The separation of powers doctrine stems from Article 3, §2 of the Michigan Constitution, which provides that:

> The powers of government are divided into three branches: legislative, executive and judicial. No person exercising powers of

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[53] *Adamo II*, p. 3.

[54] MCL 211.131e, eff. July 23, 1999 (App 128a).

[55] *Adamo II*, p. 3.

> one branch shall exercise powers properly belonging to another branch except as expressly provided in this constitution.[56]

The Court of Appeals' misapplication of this doctrine here was premised on this Court's decision in *Quinton v General Motors Corp.*[57] and the U.S. Supreme Court's decision in *Plaut v Spendthrift Farm, Inc.*[58]

But a plain reading of the *Quinton* and *Plaut* decisions quickly demonstrates that the Court of Appeals erred in its application of that doctrine to this case. In *Quinton*, the issue before this Court was whether the doctrine of separation of powers precluded the retroactive application of an amendment to the Worker's Disability Compensation Act ("WDCA"), which the Legislature enacted in response to its disagreement with this Court's decision in *Franks v White Pine Copper Div.*[59] relating to the coordination of workers' benefits. This Court acknowledged that this doctrine has been applied to "preclude the Legislature from reversing or setting aside a judgment entered by a court."[60] Recognizing, however, the need to construe the doctrine narrowly so as not to impair the proper functions and power of the Legislature, this Court held that the retroactive amendments to the WDCA did not implicate the doctrine of separation of powers because they only modified the operative effect of the Court's decision retroactively and did not specifically reopen or set aside the judgments or orders that were entered pursuant to that decision.[61]

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[56] Const 1963, Art 3, §3.

[57] 453 Mich 63; 551 NW2d 677 (1996).

[58] 514 US 211; 115 S Ct 1447; 131 L Ed 2d 328 (1995).

[59] 422 Mich 636; 375 NW2d 715 (1985).

[60] 551 NW2d at 682.

[61] 551 NW2d at 686.

Noting the importance of the need to narrowly construe the separation of powers doctrine, this Court stated:

> It is, however, fundamental that the Legislature is empowered to overrule a judicial decision, and change the substantive law . . .[62]

The Court went on to confine the application of the separation of powers doctrine to those legislative amendments that actually reopen or set aside a *final judgment.*[63]

This Court's emphasis in *Quinton* on those legislative amendments that actually reopen or set aside *final judgments* is important and results from the Court's own reliance on the U.S. Supreme Court's decision in *Plaut*, ironically, the other case relied on by the Court of Appeals in *Adamo II*. Like *Quinton*, the issue in *Plaut* involved a legislative amendment to section 27A(b) of the Securities Exchange Act that was enacted in response to a U.S. Supreme Court decision with which the Congress disagreed. Specifically, the legislative amendment extended the statute of limitations for private civil actions under section 10(b) of the Securities Exchange Act and required federal courts to reopen final judgments previously entered against claimants as a result of the application of a shorter limitations period due to the U.S. Supreme Court's prior decision in *Lampf, Pleva, Lipkind, Purpis & Petigrow v Gilbertson.*[64] Writing for the majority, Justice Antonin Scalia held section 27A(b) of the Securities Exchange Act to be "unconstitutional to the extent that it requires federal courts to reopen *final judgments* entered before its enactment."[65]

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[62] 551 NW2d at 686.

[63] 551 NW2d at 686.

[64] 501 US 350; 111 S Ct 2773; 115 L Ed 2d 321 (1991).

[65] 514 US at 240 (emphasis added).

The question then becomes what is a *final judgment* for purposes of a separation of powers analysis? The answer is clear—a final judgment is one where the availability of all appeals have been exhausted and the time for application for leave to appeal has elapsed or otherwise finally decided. For example, in *Plaut* the U.S. Supreme Court reaffirmed the principle that "When a new law makes clear that it is retroactive, an appellate court must apply that law in reviewing judgments still on appeal that were rendered before the law was enacted, and must alter the outcome accordingly."[66] The *Plaut* court explained the important principles underlying this basic legal tenet:

> . . . the decision of an inferior court is not (unless the time for appeal has expired) the final word of the [judicial] department as a whole. It is the obligation of the last court in the hierarchy that rules on the case to give effect to Congress' last enactment, even when that has the effect of overturning the judgment of an inferior court, since each court, at every level, must 'decide according to existing laws.'[67]

In other words, a judicial decision does not achieve finality in a particular case until all appeals are exhausted.

This bedrock principle has a long history in the jurisprudence of this country. In *Schooner Peggy, supra*, Chief Justice Marshall, writing for the majority of the U.S. Supreme Court, recognized that it is an appellate court's obligation to apply the law existing at the time, even when that law is enacted during the appellate process:

> It is in the general true that the province of an appellate court is only to inquire whether a judgment when rendered was erroneous or not. But if subsequent to the judgment and before the decision of the appellate court, a law intervenes and positively changes the rule which governs, the law must be obeyed or its obligation denied. . . . In such a case the court must decide according to existing laws, and

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[66] 514 US at 226.

[67] 514 US at 227 *citing United States v Schooner Peggy*, 5 US 103, 1 Cranch 103, 109; 2 L Ed 49 (1801).

> if it be necessary to set aside a judgment, rightful when rendered, but which cannot be affirmed but in violation of law, the judgment must be set aside.[68]

Over the past 200 years, this principle has been recognized, reaffirmed and adhered to over and over again.[69]

In *Quinton*, this Court appropriately adopted this definition of a "final judgment" for purposes of a separation of powers analysis when it incorporated Justice Scalia's opinion in *Plaut*. Here, the Legislature enacted the 1999 amendments to GPTA §131e shortly after the Court of Appeals issued its decision in *Adamo I* in February 1999. Importantly, those amendments took effect while the City's timely application for leave to appeal was pending before this Court. In other words, the case was still pending and no final judgment—for purposes of separation of powers—had yet been entered. Clearly, the Court of Appeals in *Adamo II* had an obligation to apply the law that existed at the time, which in this case included the 1999 amendments to GPTA §131e.

In *Romein v General Motors Corp.*,[70] this Court noted that courts have consistently upheld the retroactive application of "curative" legislation which corrects defects subsequently discovered

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[68] *Resler v Shehee*, 1 Cranch 110, 5 US 110; 2 L Ed 51 (DC 1801).

[69] *Plaut*, 514 US at 226; *Landgraf v USI Film Products*, 511 US 244, 273-280; 114 S Ct 1483; 128 L Ed 2d 229 (1994) ("a court should apply the law in effect at the time it renders its decision . . . even though that law was enacted after the events that gave rise to the suit."); *Griffith v Kentucky*, 479 US 314, 321 6; 107 S Ct 708; 93 L Ed 2d 649 (1987) ("by 'final,' we mean a case in which a judgment of conviction has been rendered, the availability of appeal exhausted and the time for petition or certiorari elapsed or a petition for certiorari finally decided.") *Johnston v Cigna Corp.*, 14 F3d 486, 489 4 (CA 10 1993), cert den 514 US 1082; 115 S Ct 1792; 131 L Ed2d 720 (1995) ("For purposes of retroactive legislation, a case is final only after the availability of appeal is exhausted, and the time for a petition for certiorari has elapsed or the petition has been denied."); *Gray v First Winthrop Corp.*, 989 F2d 1564, 1571 (CA 9 1993) ("Because none of the cases here have completed the journey through the appellate process, Congress has the authority to change the underlying substantive law by altering the statute of limitations in a way that affects those pending cases.").

[70] 436 Mich 515; 462 NW2d 555 (1990).

in a statute and which restores what the Legislature had always believed the law to be.[71] Dismissing the separation of powers challenge asserted in that case, this Court stated:

> Indeed, if the defendants' separation of powers claim had merit as applied to the curative statute challenged here, the power of the Legislature to enact curative and remedial legislation would be severely curtailed, even where the statute does not violate constitutional due process limits. This would represent a judicial usurpation of what is properly a legislative function.[72]

Similar reasoning applies here. The Court of Appeals' refusal in *Adamo II* to apply the 1999 amendments to GPTA §131e represented nothing short than a usurpation of the Legislature's power to correct the Court of Appeals' interpretation of the GPTA in *Adamo I*.

C. Retroactive Application of GPTA §131e Does Not Violate Appellee's Due Process Rights.

Appellees' claim that the Legislature's amendment to the GPTA §131e somehow violated their due process rights must also fail. Under Michigan law, a new or amended statute applies prospectively unless the Legislature has expressly or impliedly indicated its intention to give it retrospective effect.[73] In *In Re Certified Questions*, this Court set forth the guidelines for determining whether a newly enacted statute is to be given retroactive application:

> First, is there specific language in the new act which states that it should be given retrospective or prospective application.... Second, "[a] statute is not regarded as operating retrospectively [solely] because it relates to an antecedent event.". . . Third, "[a] retrospective law is one which takes away or impairs vested rights accrued under existing laws, or creates a new obligation an imposes a new duty, or attaches a new disability with respect to transactions or considerations already passed.". . . Fourth, a remedial or procedural act which does not destroy a vested right will be given

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[71] 462 NW2d at 567.

[72] 462 NW2d at 567.

[73] *People v Russo*, 439 Mich 584, 594 (1992).

> effect where the injury or claim is antecedent to the enactment of the statute.[74]

In this case, the Legislature has clearly indicated its intent that the amendments to GPTA §131e should be given retroactive application. Appellees do not dispute this.

Instead, they argue that the judgment entered by the Circuit Court in this action somehow constituted a vested right. They are wrong. The judgment in question has been under appeal from virtually the moment it was entered. This Court in *City of Detroit v Walker*—another case involving a retroactive amendment to the GPTA and tax delinquent property owners—defined a vested right as "an interest that the government is compelled to recognize and protect which the holder could not be deprived without injustice."[75] Obviously, a reversal on appeal would have deprived — without injustice—appellees' of their interest in the judgment and the underlying properties. But this Court also recognized that it "is firmly established that there is no vested right in any particular procedure or remedy."[76] And the Court further stated that "statutes or amendments that relate only to procedure, *prima facie* apply to all actions that have accrued as well as future actions, unless the amendment expressly provides otherwise."[77] In other words, tax delinquent property owners do not have a vested right in procedural statutes and court decisions interpreting those statutes. Amendments to those statutes apply not only to future actions, but also to those that have already accrued.

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[74] 416 Mich 558, 570-571; 331 NW2d 456 (1982).

[75] *City of Detroit v Walker*, 445 Mich 682, 520 NW2d 135, 143 (1994).

[76] 520 NW2d at 144.

[77] 520 NW2d at 145.

Even a cursory analysis of appellees' so-called "vested rights" demonstrates that what is at issue in this ligation is not vested property right at all; rather, it is appellees' ability to exploit a perceived procedural loophole in the GPTA. As they must, appellees concede that they and/or their predecessors-in-interest actually received and ignored all of the required notices that their redemption rights to the subject properties would expire due to their failure to pay property taxes for almost a decade. Over a 10 year period, appellees and/or their predecessors-in-interest received annual tax notices from the local authorities and, after the properties were bid in to the State for delinquent taxes, appellees received the requisite notice from the State, which they ignored.

Stated differently, appellees received what this Court described in *Dow v State of Michigan* as "proper notice and opportunity for hearing at which the person can contest the state's right to foreclose and cure any default determined."[78] This is what due process requires and this is what appellees admit they received. By amending GPTA §131e, the Legislature did not deprive appellees of any redemption rights. Instead, the Legislature corrected an inappropriate and erroneous interpretation of GPTA §131e, which, if upheld, would have disastrous consequences for the tax foreclosure process in this State.

In *Walker,* this Court held that "it is also well established that a taxpayer does not have vested right in a tax statute or in the continuance of any tax law."[79] Here, even if one were to make the assumption that the perceived loophole appellees tried to exploit was valid, appellees had no legitimate expectation or vested right to have that loophole continued. The Legislature's amendment

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[78] 396 Mich 192, 240 NW2d 450, 459 (1976).

[79] 520 NW2d at 144.

to GPTA §131e passes constitutional muster and should, as the Legislature intended, be given retroactive effect.

It is important to note that this case never involved a due process challenge by Adamo. He and his entities were accorded all of the process that was due them—they and their predecessors received and ignored multiple notices over several years that their redemption rights would expire. What the case does involve is Adamo's exploitation of a perceived—falsely, as it turns out—loophole in the statute and case law. The Michigan Legislature has now corrected that misperception of GPTA §131e.

There is no loophole. And there was no right vested in Adamo to rely on that perceived loophole, even if it existed. The amendments to GPTA §131e in no way affected Adamo's tax obligations or his right (or his predecessor's) to receive notice of a tax foreclosure. The amendments merely correct an improper application of the tax foreclosure process. As this Court stated in *Walker*, "defendants would have us include within the realm of vested rights immunity from the retroactive operation of a tax collection procedure implemented to secure delinquent taxes owed to a municipality where there is no question that the amendment is not expanding the defendants' preexisting indebtedness."[80] The Court refused to do so in that case, holding that "defendants have no property or title interest in our state or local tax collection methods. A vested right may encompass many things, but this is not one of them."[81] The Court should to the same here.

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[80] 520 NW2d at 143.

[81] 520 NW2d at 145.

III. THE COURT OF APPEALS IN *ADAMO I* MISINTERPRETED FORMER GPTA §131e AND MISAPPLIED THIS COURT'S HOLDING IN *WHITE V SHAW.*

A. Staggered Notice and Redemption Is A Reasonable Construction of Section 131e That Should Not Be Overruled On A Whim

It is a well-established rule of law in this State that the construction given to a statute by those charged with the duty of executing it is always entitled to great deference and ought not be overruled without cogent reasons.[82] Under section 131e(3), when the State notifies one owner of a final hearing date, that owner's final redemption right expires thirty days after the hearing date under section 131e(3):

> The redemption period on property deeded to the State under section 67a shall be extended until the owners of a significant property interest have been notified of a hearing before the Department of Treasury.[83]

Or, as the amended version of section 131e provides:

> The redemption period on property deeded to the State under section 67a shall be extended until the owners of a recorded property interest in the property have been notified of a hearing before the Department of Treasury.[84]

The State has always interpreted this subsection to mean that an owner who receives a section 131e notice has thirty days after the show cause hearing to redeem. If redemption does not occur, that owner's redemption rights expire. By contrast, an owner who has not been notified retains his or her redemption rights until they receive notice and the final thirty day redemption period has expired. This method has been in place for more than twenty years—until now.

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[82] *Magreta v Ambassador Steel Co,* 380 Mich 513, 519, 158 NW2d 473 (1968); *Boyer-Campbell Co v Fry,* 271 Mich 282, 296, 260 NW 165 (1935); *United States v Moore,* 95 US 760, 763 (1877).

[83] MCL 211.131e.

[84] MCL 211.131e, the amended version. MCL 211.131e was amended while this case was pending.

By applying *White*, — a decision interpreting GPTA sections 140-141 to GPTA 131e — the lower courts have assumed that the legislature intended to bind the State with the same rules as the private purchaser in the absence of a clear statutory directive. That assumption is fallacious:

> Courts cannot assume that the Legislature inadvertently omitted from one statute the language that it placed in another statute and then on the basis of that assumption, apply what is not there.[85]

In Michigan, it is a rule of statutory construction that all omissions are deemed to be intentional.[86] Therefore, the lower courts cannot assume that the State was required to accomplish redemption simultaneously simply because the private purchaser must. *A fortiori*, the Legislature is presumed to be aware of the State's interpretation and implementation of section 131e.[87] The Legislature has amended section 131e several times and amended this particular phrase twice. Neither amendment imposed a simultaneity requirement and rescinded the State's known practice of staggered redemption. And for good reason. The interests of private parties asserting and claiming title to property under GPTA §141 are entirely different from those of the government in collecting property taxes and clearing title to abandoned property under GPTA §131e.

Staggered notice and redemption is completely consistent with the plain language of section 131e, and it also comports with the State's obligations in *Dow* to afford owners notice and opportunity to be heard. Staggered notice or redemption period provisions do not prejudice those

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[85] *Farrington v Total Petroleum*, 442 Mich 201, *citing, People v Jahner*, 433 Mich 490, 504, 446 NW2d 151 (1989); and *Voorhies v Recorder's Court*, 220 Mich 155, 157-159, 189 NW 1006 (1922).

[86] *Farrington, supra; Johnson v Marks*, 224 Mich App 356 (1997); *Davidson v Bugbee*, 227 Mich App 267; 575 NW2d 574 (1997).

[87] *Canterbury v Department of Treasury*, 220 Mich App 23, 32, 558 NW2d 444 (1996), *Alexander v Liquor Control Commission*, 35 Mich App 686, 688, 192 NW2d 505 (1971). (There is a statutory presumption that the legislature is aware of an agency's interpretation of its statutes.)

owners who receive notice earlier or later in the process. Under section 131e, if a redemption is accomplished by any party, the State's deed is canceled and the parties return to *status quo*.[88] There is simply no basis for overruling the State's staggered notice and redemption procedures that satisfied due process and did not prejudice owners. Notwithstanding, the lower courts abrogated the State's longstanding and settled interpretation without explanation in contravention of their obligation to afford the State deference.

B. A Simultaneity Rule is Unworkable Because the State Cannot Guarantee That All Claimants Have Received Notice Before Scheduling a Final Hearing

While notice to all owners is constitutionally required, simultaneously finding and notifying is not only superfluous but impossible. Again, the State only adopted staggered notice and redemption procedures as a response to its difficulties in locating not only taxpayers but absentee lienholders and other potentially interested parties. Finding and simultaneously notifying owners is difficult when they hold unrecorded interests or they record after the State has conducted its title search. Some owners purposely dodge the State in an attempt to extend their redemption periods and retain title. Consequently, the State often learns of the existence of unnoticed owners after a show cause hearing has already been held. In these cases, the State simply issued the unnoticed owner a new notice scheduling another show cause hearing.

However, under the Court of Appeals' simultaneity rule, whenever a new claimant is discovered or an address is updated, the State would be obligated to reopen the redemption period for all claimants who received notice but did not redeem. Reopening the redemption period frustrates the State's ability to obtain and transfer good title. Under this rule, the State can never be

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[88] MCL 211.131e.

certain that it has simultaneously located and notified all owners. Nor can any prospective purchaser of tax reverted properties be certain that all owners have been simultaneously notified. One of the fundamentals of capitalism and market economy is "certainty." Investors and other persons need to be able to purchase tax reverted properties without undue risk of losing their investment. Insurers will not insure property if title to that property is not only clouded but susceptible to nullification at any moment. A simultaneity rule is an unnecessary aberration of the State's requirements to provide notice and opportunity to be heard. The State's current procedures fulfill these requirements. However, a simultaneity rule that makes it impossible for the State to obtain clear title and keep tax reverted properties on the tax roll by making them unreasonably risky investments. A simultaneity rule is unworkable and against the public's interest.

In the present case, the State conducted a title search and attempted to simultaneously notice all potential claimants. Although defendants' predecessors in interest received their notices in the first mailings, notices to other unrelated interest holders were returned as undeliverable. Michelle Najor, a potential claimant who claimed to have an unrecorded interest in the Harper property, had not received notice. Apparently, Ms. Najor had not been able to record her interest but instead filed a claim of interest alleging that she had an interest in the Harper property. The State renoticed Ms. Najor and the other unnoticed owners without reviving the redemption rights of the noticed owners. Although the State was in full compliance with *Dow* and section 131e, the Court of Appeals invalidated this approach simply because the owners received notices at different times.

The State had no duty—nor should it have—to resend notices to defendants or their predecessors when their predecessors' redemption rights had already expired because they had failed to timely redeem. What purpose is served by the lower courts capricious insistence that the State

simultaneously extinguish redemption rights by holding the final hearings on the same day? Even if the State sends notices simultaneously as it did in this case, it cannot guarantee simultaneous receipt. If owners will not receive notice on the same day, why must the hearings be held on the same day? If every owner receives notice and an opportunity to be heard, the State's deed should not be nullified simply because the notices were received and hearings were held on different days.

C. Until Now, *White* Has Always Been Applied Only to Private Tax Sale Purchases under GPTA Sections 140-142.

The origin of the prohibition against piecemeal or staggered redemption is found in a series of cases, beginning with *White v Shaw* in 1907, that interpret sections 140 - 143 of the GPTA.[89] None of these cases apply the prohibition of piecemeal redemption to the State. GPTA sections 140-143 relate to properties that the State sells to private purchasers at annual tax sales held each May by county treasurers.[90] At those tax sales, private citizens may purchase tax delinquent properties by paying off all delinquent taxes, interest, and charges.[91] Persons who do so are called private tax sale purchasers. As explained above, in the event a tax delinquent property is not sold at a tax sale, title to the property is bid in to the State.[92]

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[89] In addition to *White* v *Shaw*, 150 Mich 270, 114 NW 210 (1907), these cases include *Littlefield v Petrick*, 250 Mich 437, 230 NW 507 (1930); *In the matter of Mary Ann Louise Sabek*, 137 BR 659 (1992); *McVannel v Pure Oil Co*, 262 Mich 518, 247 NW 735 (1933); *United States v Varani*, 780 F2d 1296 (CA 6 1986); *Dolph v Norton*, 158 Mich 417, 123 NW 13 (1909); *Hansen v Hall*, 167 Mich 7, 132 NW 457 (1911); *GF Sanborn Co v Richter*, 176 Mich 562, 142 NW 755 (1913); *Marshal v Anderson*, 233 Mich 480, 206 NW 981 (1926); *Watters v Kieruj*, 242 Mich 537, 219 NW 673 (1928); *Otto v Phillips*, 250 Mich 546, 230 NW 940 (1930); *Holmes v Soule*, 180 Mich 526, 147 NW 621 (1914); *Geraldine v Miller*, 322 Mich 85, 33 NW2d 672 (1948); *Brousseau v Conklin*, 301 Mich 241, 2 NW2d (1942); *Petition of Szymanski*, 363 Mich 388, 109 NW2d 775 (1961); and *St. Helen RA, Inc v Hannan*, 321 Mich 536, 33 NW2d 74 (1948). MCL 211.140 - 211.143; MSA 7.198 - 7.202.

[90] MCL 211.70; MSA 7.115.

[91] *Id.*

[92] MCL 211.70; MSA 7.115.

The procedure a private tax sale purchaser must employ to perfect a tax deed under sections 140 - 143 is entirely different from the procedure for properties bid off to the State.[93] To perfect title to property purchased at an annual tax sale, a private tax sale purchaser must first obtain a purchase certificate, establishing that the purchaser paid the delinquent taxes.[94] Any person owing an interest in such property has a period of one year from the tax sale date to redeem the taxes paid by the tax sale purchaser.[95] If taxes go unredeemed during this period, the State treasurer will subsequently issue a tax deed.[96]

This tax deed, however, is subject to yet another six month redemption period that only commences after "the sheriff of the county where the property is located files a return of service with the county treasurer of that county showing service of the notice" to those persons listed in subsection 140(1) of the GPTA.[97] Stated differently, the final six month redemption period is triggered by a single event: when the sheriff files proof that all interested parties have been notified of their right to redeem the taxes paid by the purchaser.[98] A private tax sale purchaser must complete this notification process within five years from the date the tax deed is issued.[99]

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[93] MCL 211.140-143; MSA 7.198-7.202.

[94] MCL 211.71; MSA 7.116.

[95] MCL 211.74(1); MSA 7.120.

[96] MCL 211.72; MSA 7.117.

[97] MCL 211.140(1); MSA 7.198(1). These persons include, grantees in the chain of title, persons in actual possession, grantees under tax deeds, mortgagees in undischarged recorded mortgages, and holders of undischarged recorded liens.

[98] *See also* MCL 211.142(1); MSA 7.200.

[99] MCL 211.73a; MSA 7.119.

The requirement in subsection 140(1) that the final six month redemption period does not begin to run until after the sheriff files proof that all interested parties have been served with notice forms the genesis of the piecemeal rule formulated in *White* v *Shaw, supra*, and its progeny.[100] In *White*, a private tax sale purchaser acquired title to land owned by three individuals with undivided interests.[101] Due to the death of one of the owners, the tax title purchaser only served the section 140 notice on the two surviving owners. After six months, one of the owners who had received notice challenged the tax purchaser's title on grounds that the deceased owner's estate was not noticed as required by section 140.

The issue confronting the *White* court was whether the failure to serve notice upon the deceased owner's estate tolled the redemption period. Finding that, under section 140, the redemption period could not begin to run until proof was filed that all parties had been served, the *White* court upheld the noticed owner's right to redeem delinquent taxes:

> It seems very clear that the tax title purchaser cannot go into possession until he has served all of the grantees under the last recorded deed and that until he thus has complied with the statute, the right of redemption remains to all such grantees; and this is rendered clear by a reference to Section 141 . . .
>
> The tax title holder cannot proceed piecemeal to cut off the right of redemption of each part owner. Until he has complied with the statute as to all, the right of redemption remains to all.[102]

Read carefully and in the proper context, it is clear that the so-called piecemeal rule in *White* was not some independent judicial proclamation about redemption rights in general, but a rule of construction based on the actual statutory notice requirements of sections 140 and 141. The *White*

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[100] 150 Mich 270, 114 NW 210.

[101] *Id.*

[102] 150 Mich at 272, 240 NW2d 450, *citing Pike v Richardson,* 136 Mich 414, 99 NW 398 (1904).

court merely interpreted and enforced the plain language of section 140 that the writ of assistance waiting period and the final redemption period on property sold to a private tax purchaser could not run until the proof was filed that all interested parties have been notified. The holding in *White* and similar cases must therefore be narrowly confined to cases involving sections 140 and 141 of the GPTA. Indeed, there were no Michigan decisions applying this rule to GPTA section 131e before the Court of Appeals decision in this case. Because *White* interpreted unrelated private purchaser rules, it is simply not binding authority for construing the State's very different notice requirements under GPTA section 131e.

And it is clearly inapplicable to interpreting GPTA section 131e, a statute that was not even in existence at the time that *White* was decided. *White* did not address the issue of notice requirements in State foreclosures -not even in *dicta*. *White* offers this Court no insight into the snarls and snares to redevelopment and title repose unleashed by the lower court's tampering with the State's notice requirements in section 131e. Interestingly enough, it is for this very reason that the Court does not have to overrule *White* to rule in the City's favor. Because *White* was not construing the State's notice requirements, this Court only has to limit *White* to cases involving the 1905 versions of sections 140-141.

D. Application of *White's* Prohibition Against Piecemeal Notice to the State Is Not Supported by the Plain Language of Section 131e.

Given the confines of the holding in *White*, the Court of Appeals unprecedented application of the White holding to section 131e notices is not supported by the plain language of the statute. There is no language in section 131e that either states or implies that the State must simultaneously terminate the final redemption rights of all owners. Indeed, given the differences in sections 131e and 140, the contrary is true.

Unlike section 140 of the GPTA, the final redemption period provided for in section 131e is not triggered by the county sheriff filing a notice that all persons listed in section 140 have been served with notice.[103] Rather, the redemption period starts running from the show cause hearing date:

> After expiration of the redemption periods provided in section 131c ... property may be redeemed up to 30 days following the date of hearing provided by this section by payment of the amounts set forth in subsection (4) and in section 131c(1), plus an additional penalty of 50% of the tax on which foreclosure was made.[104]

This explicit distinction between the triggering of the final redemption periods under sections 140 versus 131e is important.

The show cause hearing date— not the filing of the sheriff's proof that all parties have been served notice—triggers the running of the final redemption period under section 131e. Section 131e, therefore, contemplates that a show cause hearing will be held for each owner of a significant interest in tax foreclosed property and that a separate redemption period will attach to each such hearing. By contrast, section 140 contemplates a single six month redemption period triggered by the single event of the filing of the sheriff's proof.

Nothing in GPTA section 131e requires that all owners receive notices simultaneously. Nothing in *White* suggests that its holding was ever meant to apply to GPTA section 131e foreclosures.

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[103] The Court stated *Dow, supra,* "Private tax sale purchasers, but not the state, are required to give notice by registered mail to all persons 'having any estate in lands or any interest therein . . .'"

[104] MCL 211.131e(3); MSA 7.190(3)(3).

E. Overruling the State's Staggered Notice Provisions Will Create Administrative Mayhem in the State Foreclosure Process and for the Citizens of this State.

Ironically, one attorney's erroneous presentation of private purchaser cases to the trial court cases as somehow relevant on the issue of State foreclosures has snowballed into a dispute of such horrific proportions that it could singlehandedly dismantle the entire State foreclosure process. What the lower courts did not grasp is that by altering the State foreclosure rules and exhuming redemption rights for defendants in this case, they affected tens of thousands of properties currently in foreclosure, previously foreclosed and now State-owned and those properties transferred to citizens and cities statewide. Their decisions will have the following consequences.

First, the lower courts' decision has created potential title disputes of epidemic proportions. In one fell swoop, title to literally tens of thousands of properties is clouded--if not altogether nullified. These tax reverted properties are not in some remote region in the State but are the sites of hospitals, parks, schools and even current redevelopment projects in the City, including the Stadia and the casino projects. The Michigan State Housing Development Authority has used these tax reverted properties to build low and moderate income public housing in Detroit and other cities.[105] Private citizens are currently using these properties for businesses and residential purposes. Are these properties really to be turned over to delinquent taxpayers who not only neglected to exercise their tax redemption rights years ago, but also received their statutorily required notices? This Court cannot countenance a result that deprives Michigan citizens of property simply because redemption hearings were not held on the same day—especially when staggered redemption is permissible under section 131e.

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[105] *See*, MCL 211.67a.

Second, the lower courts' decision will embroil Michigan courts for years in litigation over title disputes. State officials will be hopelessly entangled in administrative contests trying to sort out redemption rights among current and previous owners.

Third, this decision will put a sword into the heart of redevelopment projects in Detroit and other cities throughout the State. Former owners, who abandoned the properties will come back wielding these "resurrected" redemption rights which will bring redevelopment to a screeching and expensive halt.

Fourth, the Court of Appeals decision exacerbates the blighting effect of title gridlock on this State's neediest urban centers. In most cases, properties become tax delinquent because their owners have decided to abandon them altogether. The result is that the properties become eyesores to the community, or, worse yet—as is the case here—sites of illegal dumping and environmental contamination that pose a serious threat to the public health, safety and welfare. The fact that many of these tax delinquent properties are concentrated in some of the poorest regions of Michigan, where redevelopment is most needed, raises environmental justice concerns. Allowing owners who receive and ignore redemption notices the opportunity to further tie up the foreclosure process through the indefinite extension of redemption periods only prolongs the state of abandonment and disrepair that afflicts many of these properties and the communities in which they are located.

Fifth, this decision frustrates the public's interest in title repose and redevelopment. Developers and other prospective purchasers will be dissuaded from buying abandoned tax delinquent property by a simultaneity rule that repeatedly rescinds title. Indefinitely extending the redemption period until the State achieves simultaneous redemption hinders the State's, the City's

and every other municipalities' ability to create good title that title companies would be willing to insure.

Sixth, reopening the redemption period of all noticed owners invalidates the prior show cause hearing, and makes the State's deed a nullity every time a new claimant is discovered. The State will be relegated to the status of a mere custodian of these properties because it will never be certain that it has accomplished simultaneous notice and redemption. Finally, the Court of Appeals decision provides former and current owners of tax delinquent abandoned properties throughout Michigan with an improper and undeserved windfall. Here, although the State complied with its notice requirements, delinquent taxpayers who received notice and failed to timely redeem will receive land that the State has expended $1.35 million dollars to restore to commercial viability. This untenable result will be repeated all over the State of Michigan unless the Court acts.

CONCLUSION AND RELIEF REQUESTED

For all the foregoing reasons, the City asks this Court to (a) reverse the decisions of the Court of Appeals and the Circuit Court and (b) enter judgment in favor of the City, holding that defendants have no redemption rights in the subject properties.

Respectfully submitted,

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Dated: February 22, 2002